

REMARKSI. Status of Claims

Claims 1-81 are pending in the present application. By this Amendment, Claims 1-3, 12, 17, 19, 23, 29, 30, 38, 50, 58, 60, 62, 65, 70, 80, and 81 have been amended.

II. Support for Claim Amendments

It is submitted that the amendments to the specification and claims are supported by the application as filed and add no new matter.

III. Section 112 Rejections

Claims 12-13, 23-37, and 80-81 have been rejected under 35 U.S.C. § 112. Claims 12, 23, 29, 30, 80, and 81 have been amended and it is submitted that Claims 12-13, 23-37 and 80-81 comply with the requirements of Section 112.

IV. Section 102/103 Rejections

Claims 1-4, 9, 12-18, 23-26, 28-32, 35-36, 38-39, 42-48, 62-65, 68, 70-75, 78, and 80-81 have been rejected under 35 U.S.C. § 102 over Burgess '750; Claims 1-4, 9, 12-14, 17, 23-27,

29-31, and 36-37 have been rejected under 35 U.S.C. § 102 over Volk '102.

Claims 2, 4-8, 14, 16-18, 27, 32-35, 37, 39-44, 49-57, 60, 65-67, 69, 75-77, and 79 have been rejected under 35 U.S.C. § 103 over Burgess '750 in view of Su '516; Claims 58-59 have been rejected under 35 U.S.C. § 103 over Burgess '750 in view of Su '516, and further in view of Woodruff '496; Claims 19-22 have been rejected under 35 U.S.C. § 103 over Burgess '750 in view of Su '516 and Woodruff '496; Claims 2, 4, 10-11, 17, 27, 37, 49-61, 69, and 79 have been rejected under 35 U.S.C. § 103 over Burgess '750 in view of Woodruff '496; Claims 5-9, 18, and 54 have been rejected under 35 U.S.C. § 103 over Burgess '750 in view of Woodruff '496 and further in view of Su '516.

These rejections are respectfully traversed and each of the rejections will now be addressed in turn.

A. Claims 1-2

Claim 1 includes the limitation "flag member extending beyond the hazardous environment and being viewable from a distance." By contrast, Burgess '750 discloses a device that upon detection of the termites sends an electrical signal, the device contained within a box-shaped enclosure (covers 1, 2,

11). Claim 1 also includes the limitation "openings in the body for controllably exposing the test element to the hazardous environment containing the material-consuming organisms." The Burgess '750 enclosure does not appear to have any openings. Thus it is submitted that Burgess '750 does not include these limitations therefore does not anticipate Claim 1. See *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715 (Fed. Cir. 1984) (anticipation requires a reference to disclose each and every claim limitation).

Volk '102 comprises a contained housing 11 whereby the fusible material 59 melts when exposed to high heat in contrast to the limitations of Claim 1 of "openings in the body for controllably exposing the test element to the hazardous environment containing the material-consuming organisms and for providing passage for the organisms through the body to the test material." Since Volk '102 lacks these limitations, it is submitted that Claim 1 is not anticipated thereby.

Moreover it is submitted that missing these limitations, a *prima facie* case of obviousness cannot be made via either Burgess '750 or Volk '102. Therefore Claim 1 should be non-obvious and allowable over either Burgess '750 or Volk '102.

Claim 2 should also be allowable over either Burgess '750 or Volk '102 in part as depending upon Claim 1. Moreover, Claim 2 includes the limitation that the means for controllably exposing further comprises a transverse opening on a sidewall for communicating with the hazardous environment. Neither Burgess '750 nor Volk '102 disclose a transverse opening on a sidewall.

Further, neither Su '516 nor Woodruff '496 (each asserted by the office action as obvious in combination with Burgess '750) provides the elements missing from Burgess '750 as discussed with respect to claim 1. By way of example, and not by limitation, neither Su '516 nor Woodruff '496 discloses a "flag member extending beyond the hazardous environment and being viewable from a distance." Thus, it is submitted that a *prima facie* case of obviousness cannot be made by the combination of Burgess '750 with Su '516 as asserted in the Office Action in regards to claims 1 or 2.

#### B. Claims 3-16

It is submitted that Burgess '750 does not include the limitations of Claim 3 of (1) a flag member "extending beyond the hazardous environment and being viewable from a distance" or

(2) "means for controllably exposing the bait element to the organisms, the means for exposing comprising openings in the body for providing passage for the organisms through the body to the bait element."

It is submitted that Volk '102 does not anticipate Claim 3 because it does not disclose the limitations of (1) "a bait element supported relative to the body and comprising a consumable structural material" or (2) "means for controllably exposing the bait element to the organisms, the means for exposing comprising openings in the body for providing passage for the organisms through the body to the bait element." The office action does not identify any element in Volk '102 corresponding to a bait element. As for the passages, it is difficult to see any corresponding structure in the Volk '102 thermometer capable of serving that function.

The office action asserts that Burgess '750 discloses an opening 11, however, the element 11 is defined (at Col. 1 lines 63-63) "The frangible capsule 3 may be enclosed by a top cover 1, four side covers 2, and the illustrated combination of the bottom cover 11 and bait assembly 12." Thus the bottom cover 11 cannot serve as openings in the body for providing passage for the organisms through the body as in Claim 3. Further, the

Burgess '750 bait assembly 12 does not have an opening on its bottom surface and thus the organisms would be required to forge their own passage through bait assembly 12. Thus it is submitted that Burgess '750 does not disclose openings in the body for providing passage for the organisms through the body and cannot anticipate Claim 3.

The office action also asserts that Volk '102 discloses a passage as defined by bore 19. However, the thermometer disclosed in Volk '102, as shown in Fig. 1, has a cap 48 covering bore 19, which means that organisms cannot enter through bore 19.<sup>1</sup> Thus, it is submitted that Volk '102 does not disclose an entrance passage for admitting the organisms and cannot anticipate Claim 3.

Moreover it is submitted that missing these limitations, a *prima facie* case of obviousness cannot be made via either Burgess '750 or Volk '102. Therefore Claim 3 should be non-obvious and allowable over either Burgess '750 or Volk '102.

Dependent Claims 4-16 should also be allowable over either Burgess '750 or Volk '102 in part as depending upon Claim 3.

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<sup>1</sup> "The underside 49 of the cap 48 is adapted to mate with the upper surface of the flange 13 on the housing 11." Volk '102, Col. 5 lines 37-39.

These claims include additional limitations, certain of which will be discussed in the following.

Claim 12 includes the limitations:

wherein the means for applying a load force comprises a first coupling for anchoring one end of the bait element to the body, a second coupling for connecting an opposite end of the bait element to a spring, the spring applying tensile load to the bait element through the second coupling.

The office action asserts that Burgess '750 discloses an alternate release trigger 9, serving as the bait element, anchored on one end by release trigger 10 and on an opposite end by string release trigger 7. However, Burgess '750 discusses that alternate release trigger 9 rests loosely in the slot on bait assembly 12 and is held in position only by pin release trigger 10 (see, Col. 2, lines 22-27). As such, it would appear that the alternate release trigger 9 is not anchored on the end near the bottom of bait assembly 12, but is anchored only on the end near pin release trigger 10, which is the same end where string release trigger 7 is located. Thus, Burgess '750 does not disclose a first coupling anchoring one end of the bait

element and a second coupling anchoring an opposite end of the bait element and cannot anticipate Claim 12.

The office action also alleges that Volk '102 discloses a first coupling for anchoring one end of the bait element and a second coupling for connecting an opposite end of the bait element. However, as discussed above with respect to Claim 3, Volk '102 does not disclose a bait element.

Further, the interaction between necked region 24 and fusible material 59 in Volk '102 is not a coupling. Fusible material 59 in its solid form merely abuts necked region 24 and the two elements do not otherwise engage one another. Thus, Volk '102 fails to disclose a first coupling for anchoring one end of the bait element as in Claim 12.

Claim 14 includes the limitations "wherein the bait element has a bait substance applied thereto." The office action asserts that Burgess '750 discloses the bait element having a bait substance applied thereto, but does not point to where this limitation is disclosed in Burgess '750. Burgess '750 does disclose certain elements made of "wood or other material with cellulose content" or "cotton or other material with a cellulose content" (Col. 1 line 70 to Col. 3 line 2) but does not disclose these elements having a bait substance applied on thereto. The



office action asserts that Volk '102 "discloses a bait substance (59 is organic; bait substance not being particularly claimed), is applied to a bait element, thermometer rod elements 37-40, 44. This rejection should be withdrawn for at least the following reason.

As discussed above with respect to Claim 3, Volk '102 does not disclose a bait element. Moreover, though fusible material 59 can be organic, it is difficult to understand how that disclosure relates to a bait substance as in Claim 14. Thus, Volk '102 cannot anticipate Claim 14.

For at least the reasons stated above, Claims 14-16 are patentable over Burgess '750 and Volk '102.

#### C. Claims 17-18

Claim 17 is directed to a method for monitoring a predetermined cumulative eating activity of organisms on a bait member, comprising:

- (a) providing a housing body having an elongate cavity and a transverse side wall passage;
- (b) anchoring one end of the bait member to the body with the bait member extending within the cavity;
- (c) connecting a flag member to an opposite end of the bait member with the flag member extending to a position proximate a flag opening of the body;

(d) connecting a spring member between the flag member and the housing body for tensioning the bait member, wherein upon consumption by eating activity of the organisms, the bait member is sufficiently weakened and fractures whereupon the flag member is moved via action of the spring member to an extended position outside of the housing body viewable from a distance from the housing body;

(e) placing the housing body in a medium subject to infestation by the organisms with the side wall passage being accessible by the organisms and the flag opening being located outside the medium; and

(f) periodically observing the housing body for display of the flag member in an extended position thereof.

Burgess '750 does not disclose an elongate body have a transverse side wall passage as in step (a). First, the open end 20 (asserted by the office action to be the "opening") is at the top of the unit and not the side wall and second, the opening is closed off by the cap portion 48:

"The underside 49 of the cap 48 is adapted to mate with the upper surface of the flange 13 on the housing 11. In the embodiment shown in FIGS. 1-4, the underside 49 of the cap is substantially planar. Instead of flange 13 and cap portion 48 having substantially planar surfaces, the upper surface of the flange 13 and the underside 49 of the cap may be

formed with mating grooves and ridges or other complementary mating shapes if desired."  
(Col. 5 lines 37-44).

Thus there is indeed no passage at the open end 20.  
Second, in similar fashion as discussed above with respect to Claim 12, Burgess '750 does not disclose the combination in steps (b) and (c). Particularly, in step (c) connecting a flag member to an opposite end of the bait member with the flag member extending to proximate a flag opening of the body and (d) wherein upon consumption by eating activity of the organisms, the bait member is sufficiently weakened and fractures whereupon the flag member is moved via action of the spring member to an extended position outside of the housing body viewable from a distance from the housing body.

Further, Volk '102 also does not anticipate Claim 17 because it fails to disclose a body having a transverse side wall passage as in step (a).

The office action further cites Su '516 and Woodruff '496 in combination with Burgess '750 as disclosing opening in the side wall, but neither Su '516 nor Woodruff '496 provides additional suggestion "wherein upon consumption by eating activity of the organisms, the bait member is sufficiently

weakened and fractures whereupon the flag member is moved via action of the spring member to an extended position outside of the housing body viewable from a distance from the housing body" nor is there any suggestion to make the modification.

Thus it is submitted that a *prima facie* case of obviousness cannot be made by the combination as asserted in the Office Action. For at least these reasons, claim 17 is non-obvious and allowable over both Burgess '750 in view of Su '516 or over Burgess '750 in view of Woodruff '496.

It is also submitted that dependent claim 18 should also be allowable in part as depending upon an allowable base claim. Moreover, Claim 18 includes the step of "interposing a consumable porous barrier between the medium and the side wall passage for preventing the medium from contacting the bait member. There is no such porous barrier disclosed in Su '516 or Woodruff '496, thus the medium (e.g., soil) may enter into the unit.

#### D. Claims 19-22

Claim 19 includes the limitations "a consumable porous barrier member covering each of the entrance passages" and "at least a portion of the flag member extending beyond the body and

being viewable from a distance." Burgess '750 does not disclose either of these limitations. Further, neither Su '516 nor Woodruff '496 remedy this deficiency. Contrary to the assertion in the office action (page 15, paragraph 11) the casing on bait tube in Fig. 3 does not appear to cover the entrance passages.

Thus, it is submitted that a *prima facie* case of obviousness cannot be made by the combination of Burgess '750 with Su '516 and Woodruff '496 as asserted in the Office Action in regards to claim 19. For at least this reason, claim 19 is non-obvious and allowable over Burgess '750 in view of Su '516 and Woodruff '496. Further, claims 20-22 should be allowable in part as depending upon an allowable base claim.

#### E. Claims 23-29

Claim 23 as amended recites the additional limitation of providing a transverse passageway through at least a portion of the body. For similar reasons as set forth above, it is submitted that neither Burgess '750 nor Volk '102 disclose this limitation. Thus, neither reference anticipates Claim 23.

Missing this limitation, it is submitted that a *prima facie* case of obviousness cannot be made. For at least this reason,

Claim 23 non-obvious and allowable over Burgess '750 or Volk '102.

Moreover, Claim 23 includes the limitation "wherein the passageway is enclosed by one or more sidewalls, the passageway having a diameter being dimensioned to permit travel of the subterranean organisms from the soil toward the material and being tapered from a wide diameter end proximate to the soil to a narrow diameter end proximate to the material, whereby the passageway directs the subterranean organisms toward a specific portion of the material where the subterranean organisms can cause a weakening of the material." By contrast the openings of Woodruff '496 comprise slots extending a substantial arc around the unit. Though there is a narrowing affect in the vertical direction, there is no substantial "a narrow diameter end proximate to the material, whereby the passageway directs the subterranean organisms toward a specific portion of the material where the subterranean organisms can cause a weakening of the material" as in Claim 23. There is no disclosure in Woodruff '596 of such a structure or purpose as the organisms are permitted to forage anywhere along the slot.

Thus it is submitted that Claim 23 is non-obvious and allowable over Burgess '750 in view of Su '516 and/or Woodruff '496.

Further, dependent Claims 24-29 should be allowable in part as depending upon an allowable base claim. Certain of these dependent claims will be discussed in the following.

Claim 27 includes the step of "providing an annular-shaped skirt around the body near an end of the body distal from the soil, the skirt covering the ground in an area around the body, whereby the skirt provides a moisture barrier around the body and thereby enhances the attractiveness of the material to the subterranean organisms." The office action asserts that it would be obvious to modify the device of Burgess '750 in view of Su '516, but it is submitted that there is no suggestion for such a modification, but on the contrary, the box-shaped structure of Burgess '750 would not lend itself to a structural modification to accommodate such an annular-shaped skirt.

#### F. Claims 30-37

Claim 30 includes the limitations:

a transverse opening in the wall, the opening having a diameter dimensioned to permit the organism to fit through the opening;

a passage in the body extending at least partially between the opening and the material, the passage having a sidewall enclosing the passage, the passage dimensioned to permit the organism to travel through the passage to reach the material, wherein the sidewall of the passage is tapered from a wide diameter end distal to the material and a narrow diameter end proximate to the material, whereby the tapered sidewall directs the organism to a specific portion of the material where the organism can consume the material and thereby cause a structural weakening of the material; and

a spring in tension with the material so as to apply a force to the material, the force being sufficient to cause a displacement of at least a portion of the material when there is a structural weakening of the material, the displacement effectuating an exterior projection of a signaling member from the body indicating the presence of the organism in the device.

Neither Burgess '750 nor Volk '102 disclose the limitations "a transverse opening in the wall" or "wherein the sidewall of the passage is tapered from a wide diameter end distal to the material and a narrow diameter end proximate to the material" or "effectuating an exterior projection of a signaling member from the body" and thus neither patent anticipates Claim 30.



Missing this limitation, it is submitted that a *prima facie* case of obviousness has not been made and Claim 30 is non-obvious and allowable over both Burgess '750 and Volk '102.

By contrast, the openings of Woodruff '496 comprise slots extending a substantial arc around the unit. Though there is a narrowing affect in the vertical direction, there is no substantial "wherein the sidewall of the passage is tapered from a wide diameter end distal to the material and a narrow diameter end proximate to the material, whereby the tapered sidewall directs the organism to a specific portion of the material where the organism can consume the material and thereby cause a structural weakening of the material" as in Claim 30. There is no disclosure in Woodruff '596 of such a structure or purpose as the organisms are permitted to forage anywhere along the slot.

Further, it is submitted that dependent Claims 31-37 should be allowable in part as depending upon an allowable base claim.

#### G. Claims 38-49

Claim 38 includes the limitations

a body core, separable from the body housing,  
disposed within the inner cavity in a removably  
telescopic orientation;

a spring in tension with the material so as to apply a force to the material, the force being sufficient to cause a displacement of at least a portion of the material upon structural weakening of the material, the displacement effectuating an exterior projection of a signaling member from the body indicating the presence of the organism in the device.

By contrast, the Burgess '750 device includes elements disposed inside an enclosure, but appears to have no telescopic orientation. Further Burgess '750 sends a signal out electrically, there is no "displacement effectuating an exterior projection of a signaling member" as in Claim 38. Thus it is submitted that Claim 38 is not anticipated by Burgess '750.

Moreover, missing these limitations, it is submitted that a *prima facie* case of obviousness has not been made as to Claim 38. The Su '516 patent discloses a toxicant delivery system, but does not provide either of these missing limitations. Thus it is submitted that Claim 38 is non-obvious and allowable over Burgess '750 alone or in combination with Su '516.

It is submitted that dependent Claims 39-49 should be allowable in part as depending upon an allowable base claim.

#### H. Claims 50-61

In regards to claim 50, Burgess '750 does not disclose the limitations "a body core substantially filling an inner cavity within the body housing" or "a material consumable by the organism within the body core, the material extending most of the length of the body housing." With the material extending most of the length of the body housing, organisms can enter the device at various vertical positions, consume the material at that position and thereby actuate the device. By contrast, the Burgess '750 device's consumable triggers 7, 9, 10 are positioned at a particular location requiring the organisms to reach that particular location in order to actuate the device. Though Su '516 includes (in Fig. 3) a bait matrix over most of the length of the bait tube and Woodruff '496 includes a bait tube 7 over most of the length of the outer tube 1, there is no suggestion in either patent as to how to modify the structure of Burgess '750 to a device having the (consumable) material extending most of the length of the body housing device as in Claim 50.

Thus it is submitted that a *prima facie* case of obviousness cannot be made by either the combination of Burgess '750 and either Su '516 or Woodruff '496, and thus Claim 50 should be allowable.

It is also submitted that dependent claims 51-61 should also be allowable in part as depending upon an allowable base claim. These claims include additional limitations, certain of which will be discussed in the following.

Claim 53 includes the limitations of "a barrier disposed about the body core." Thus the device of Claim 53 includes an body housing with an external wall, a barrier, and a body core. Neither Woodruff '750, Sue '516 or Woodruff '496 discloses a structure with three such element.

Claim 58 includes the limitations "wherein the passage has a sidewall that is tapered from a wide diameter end distal to the material consumable by the organism and a narrow diameter end proximate to the material consumable by the organism, for directing the organism to a specific location on the material for consumption." By contrast, the openings of Woodruff '496 comprise slots extending a substantial arc around the unit. Though there is a narrowing affect in the vertical direction, there is no substantial "a wide diameter end distal to the material consumable by the organism and a narrow diameter end proximate to the material" as in Claim 58. There is no disclosure in Woodruff '596 of such a structure or purpose as the organisms are permitted to forage anywhere along the slot.

I. Claims 62-69

Claim 62 includes the limitations

a body having an exterior wall;

a plurality of transverse openings in the exterior wall of the body, dimensioned to permit the organisms to fit through;

a cavity within the body, the cavity having an interior wall, the cavity being substantially smaller than the body;

a plurality of transverse openings in the interior wall of the cavity, dimensioned to permit the organisms to fit through;

a material disposed within the cavity; wherein the organisms, when in contact with the material, cause a structural weakening of the material;

a spring in tension with the material so as to apply a force to the material, the force being sufficient to cause a displacement of at least a portion of the material when there is a structural weakening of the material, the displacement effectuating an exterior projection of a signaling member from the body indicating presence of the organisms in the device.

Burgess '750 does not disclose exterior and interior walls, each with the transverse openings or an exterior projection of a signaling member from the body indicating presence of the organisms in the device as in Claim 62. Further, neither Su '516 or Woodruff '496 disclose such limitations. Thus it is submitted that Claim 62 is not anticipated by Burgess '750 and missing the above limitations it is submitted that a *prima facie* case of obviousness cannot be made either alone or in combination with Su '516 or Woodruff '496.

It is also submitted that dependent claims 62-69 should also be allowable in part as depending upon an allowable base claim. These claims include additional limitations, certain of which will be discussed in the following.

Claim 65 includes the limitations of "a barrier disposed outside the openings in the interior wall of the cavity." Thus the device of Claim 53 includes an body housing with an external wall, a barrier, and a body core. Neither Woodruff '750, Sue '516 or Woodruff '496 discloses a structure with three such element.

#### J. Claims 70-79

Claim 70 includes the limitations

a body, having an exterior wall, for at least partial submersion in soil leading with a bottom end of the body, the body having a top end opposite from the bottom end;

a plurality of transverse openings in the exterior wall of the body, dimensioned to permit the organisms to fit through;

a material disposed within the body; wherein the organisms, when in contact with the material, cause a structural weakening of the material;

a cavity within the body, the cavity being substantially smaller than the body, the cavity being near the top end of the body;

a spring disposed within the cavity, the spring being held in tension by the material such that a structural weakening of the material causes an end of the spring to undergo a displacement, the displacement effectuating an exterior projection of a signaling member from the body indicating presence of the organisms in the device.

Burgess '750 does not disclose this limitation and cannot anticipate Claim 70.

For at least this reason, Claim 70 is patentable over Burgess '750. Further, Claims 71-75 and 78 should be allowable in part as depending upon an allowable base claim.

Burgess '750 does not disclose an "exterior projection of a signaling member from the body indicating the presence of the

organism in the device" as in Claim 70. Further, neither Su '516 nor Woodruff '496 provides the elements missing from Burgess '750 with respect to claim 70.

Thus, it is submitted that a *prima facie* case of obviousness cannot be made by the combination of Burgess '750 alone or in combination with either Su '516 and Woodruff '496 in regards to Claim 70.

It is also submitted that dependent claims 71-79 should also be allowable in part as depending upon an allowable base claim.

K. Claim 80

Claim 80 includes the limitations

a body housing the material, the body being placed in the soil and having a transverse passageway disposed through at least a portion of the body from the soil toward the material, wherein the passageway is enclosed by one or more sidewalls, the passageway being dimensioned to permit travel of the subterranean organisms from the soil toward the material and being tapered from a wide diameter end proximate to the soil to a narrow diameter end proximate to the material, whereby the passageway directs the subterranean organisms toward a specific portion of the material where the subterranean organisms can cause a weakening



of the material.

Burgess '750 does not disclose several of these limitations, including (1) a transverse passageway disposed through at least a portion of the body from the soil toward the material, (2) the passageway being dimensioned to permit travel of the subterranean organisms from the soil toward the material and being tapered from a wide diameter end proximate to the soil to a narrow diameter end proximate to the material. Thus it is submitted that Claim 80 is not anticipated by Burgess '750.

With respect to the tapered passageway, the openings of Woodruff '496 comprise slots extending a substantial arc around the unit. Though there is a narrowing affect in the vertical direction, there is no substantial "tapered from a wide diameter end proximate to the soil to a narrow diameter end proximate to the material" as in Claim 80. There is no disclosure in Woodruff '596 of such a structure or purpose as the organisms are permitted to forage anywhere along the slot.

Thus it is submitted that *prima facie* case of obviousness is not made by Burgess '750 alone or in combination with Woodruff '496. Thus Claim 80 is non-obvious and allowable.

L. Claim 81

Claim 81 includes the limitations

a spring mechanism that applies a force to the material, the force being effective to cause a displacement of at least a portion of the material when there is a weakening of the material; extra

a body housing the material, the body being placed in the soil and having a transverse passageway disposed through at least a portion of the body from the soil toward the material, wherein the passageway being dimensioned to permit travel of the subterranean organisms from the soil toward the material, the passageway having a larger diameter opening proximate to the soil relative to a narrower diameter opening proximate to the material, whereby the passageway directs the subterranean organisms toward a specific portion of the material where the subterranean organisms can cause a concentrated weakening of the material; and

means for signaling the weakening of the material, in response to the displacement, as a result of the material's exposure to the subterranean organisms.

Burgess '750 does not disclose several of these limitations, including (1) a transverse passageway disposed through at least a portion of the body from the soil toward the material, (2) the passageway having a larger diameter opening proximate to the soil relative to a narrower diameter opening proximate to the material, whereby the passageway directs the subterranean organisms toward a specific portion of the material where the subterranean organisms can cause a concentrated weakening of the material. Thus it is submitted that Claim 81 is not anticipated by Burgess '750.

With respect to the tapered passageway, the openings of Woodruff '496 comprise slots extending a substantial arc around the unit. Though there is a narrowing affect in the vertical direction, there is no substantial "tapered from a wide diameter end proximate to the soil to a narrow diameter end proximate to the material" as in Claim 80. There is no disclosure in Woodruff '596 of such a structure or purpose as the organisms are permitted to forage anywhere along the slot. Thus it is submitted that *prima facie* case of obviousness is not made by Burgess '750 alone or in combination with Woodruff '496. Thus it is submitted that Claim 81 is non-obvious and allowable.

V. CONCLUSION

Therefore it is respectfully submitted that Claims 1-81 are allowable and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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By:           /John A. Rafter, Jr./  
John A. Rafter, Jr.  
Reg. No. 31,653

Customer No. 33451  
STOEL RIVES LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204-1268  
Telephone: (503) 224-3380  
Facsimile: (503) 220-2480  
Attorney Docket No. 60018/101:1